

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALEX CRUZ,

Plaintiff,

- against -

COX MEDIA GROUP, LLC

Defendant.

Docket No. 1:18-cv-1041

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Alex Cruz (“Cruz” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Cox Media Group, LLC, (“Cox” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of terrorist Sayfullo Saipov in control of police officers after the deadly truck attack in downtown New York City, owned and registered by Cruz. Accordingly, Cruz seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Cruz has a usual place of business at 425 West 205th Street, Apt 2A, New York, New York 10034.

6. Upon information and belief, Cox is a domestic limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 555 Sunrise Hwy, West Babylon, New York 11704. At all times material, hereto, Cox has owned and operated website at the URL: www.WSBTV.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Cruz photographed terrorist Sayfullo Saipov in control of police officers after the deadly truck attack in downtown New York City (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Cruz then licensed the Photograph to the New York Post. On October 31, 2017, the New York Post ran an article that features the Photograph entitled *Cops ID suspected terrorist in deadly downtown truck rampage*. See <https://nypost.com/2017/10/31/nypd-investigating-downtown-carnage-as-possible-terror-attack/>. Cruz’s name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

9. Cruz is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph is registered with the United States Copyright Office and was given registration number VA 2-074-488.

B. Defendant's Infringing Activities

11. Cox ran an article on the Website entitled *8 dead in 'cowardly act of terror' in New York City*. See <http://www.wsbtv.com/news/at-least-2-dead-others-injured-after-being-hit-by-vehicle-in-nyc/635020389>. The article prominently featured the Photograph. A true and correct copy of the article is attached here to Exhibit C.

12. Cox did not license the Photograph from Plaintiff for its article nor did Cox have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COX)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Cox infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Cox is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Cox have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Cox be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
February 16, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York
Tel: 516-233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Alex Cruz